

REMARKS

Claims 2-4, and 8 have been cancelled without prejudice to filing in a later application. Claims 1, 9, and 13 have been amended. New claim 14 has been added. Upon entry of the above amendments and following remarks, claims 1, 5-7, and 9-14 will be pending in the present application.

New Claim 14

New claim 14 has been added to the present application. New claim 14 is fully supported by the application as filed and adds no new matter. For example, Applicant respectfully directs the Examiner's attention to page 6 of the specification as filed.

Claim Objection

Claim 13 has been objected to based on the informality that the language bridging lines 2 and 3 of the claim is asserted to "no make sense". Applicant has amended claim 13 to replace the word "temporarily" with the word "removable". As such, any proper objection to claim 13 has been overcome.

Claim Rejections Under 35 U.S.C. §102(b)

Claims 1, 2, 5-10, and 13 have been rejected under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 2,193,934 to Moores. Applicant notes the proper standard under 35 U.S.C. §102 for finding anticipation is that the prior art must disclose each and every limitation found in the claims, either expressly or inherently. Rockwell International Corp. v. United States, 147 F.3d 1358, 1363 (Fed. Cir. 1998); Electro Med System S.A. v. Cooper Life Sciences, 34 F.3d 1048, 1052 (Fed. Cir. 1994). Furthermore, the omission of any claimed element no matter how insubstantial is grounds for traversing a rejection based on Section 102. Connell v. Sears Roebuck & Co., 772 F.2d 1542 (Fed. Cir. 1983).

Claims 2 and 8

Claims 2 and 8 have been cancelled without prejudice to filing in a later application. As such, any proper rejection under 35 U.S.C. §102(b) has been obviated.

Rejection of Amended Claim 1

A rejection of amended claim 1 is improper for at least the reason that Moores fails to disclose a housing having an air inlet aperture open to atmospheric air and a cowling, an agitator positioned within the cowling...a rotational driveshaft within the housing and through which atmospheric air is drawn by action of the agitator. In contrast, Moores requires use of a pressurized air supply for forcing air into the mixed beverage. For example, the “bore 39...provides for entry of air under pressure”. Moores, page 2, column 1, lines 24-25; See also, Moores, page 2, column 1, lines 34-35 (an air line which supplies the necessary pressure of air). As such, claim 1 is not subject to a proper rejection under 35 U.S.C. §102(b).

Rejection of Claims 2, 5-7, 10, and 13

Claims 2, 5-7, 10, and 13 depend either directly or indirectly on allowable claim 3. As such, claims 2, 5-7, 10, and 13 are not subject to a proper rejection under 35 U.S.C. §102(b).

Claims 1, 2, 5-10, and 13 Are Non-Obvious Under a Proper 35 U.S.C. §103 Analysis

The claimed invention is additionally non-obvious with regard to Moores since there is at the minimum no suggestion or motivation present in the teachings of Moores, or within the knowledge of one of ordinary skill in the art as evidenced by, at least, the references cited in the Office Action, to do what the Applicant has done in the claimed invention. For example, at a minimum Moores does not teach or suggest: a housing having an air inlet aperture open to

atmospheric air and a cowling, an agitator positioned within the cowling...a rotational driveshaft within the housing and through which atmospheric air is drawn by action of the agitator. Applicants note that as thoroughly discussed in a recent court holding:

“...the essential factual evidence on the issue of obviousness is set forth in Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966) and extensive ensuing precedent. The patent examination process centers on prior art and the analysis thereof. When patentability turns on the question of obviousness, the search for and analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness. See, e.g., McGinley v. Franklin Sports, Inc., 262 F.3d 1339, 1351-52, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001) (“the central question is whether there is reason to combine [the] references,” a question of fact drawing on the Graham factors).” In re Lee, 61 USPQ2d, 1430 (Fed. Cir. 2002)

Such a rigorous examination, as required by law, clearly would find the claimed invention non-obvious based on at least a study of the problem to be solved by the Applicant, and the functionality of the claimed invention. For example, Applicant's claim invention, among other things, provides “a beverage mixer/aerator having increased air-infusion efficiency”. Specification, page 1.

Applicant further notes that the references cited in the Office Action are clearly indicative that a housing having an air inlet aperture open to atmospheric air and a cowling, an agitator positioned within the cowling...a rotational driveshaft within the housing and through which atmospheric air is drawn by action of the agitator is not taught or suggested in the knowledge of one of skill in the art. For example, the cited Holtzaple publication teaches and suggests an agitator which is designed to draw liquid into an internal area of the body and expel the liquid through apertures in the side of the body through rotation of the body. In addition, Ahlstrom (United States Patent No. 6,712,980) teaches and suggests an agitator in the form of a housing having a suction opening at the bottom and outlet openings around its equator so that liquid is drawn into the

interior of the housing through the suction opening and dispelled through the outlet openings at the equator.

Claim Rejections Under 35 U.S.C. §103

Claims 3 and 4 have been rejected under 35 U.S.C. §103 as unpatentable over Moores taken together with either the cited Holtzapple publication, or United States Patent No. 6,712,980 to Ahlstrom; and Claims 11 and 12 have been rejected under 35 U.S.C. § as unpatentable over Moores taken together with either United States Patent No. 1,417,883 to Beers, United States Patent No. 3,067,988 to Rodoz, or WO 02/21945 to Schub.

Applicant notes that in order to establish a *prima facie* case of obviousness three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143.

Rejection of Claims 3 and 4

Claims 3 and 4 have been cancelled without prejudice to filing in a later application. As such, any proper rejection under 35 U.S.C. §103 has been obviated.

Rejection of Claims 11 and 12

As noted above, the courts have long established that “when even one claimed limitation is not found in the combination of prior art, a rejection under 35 U.S.C. §103 is improper”. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Claims 11 and 12 depend indirectly on amended claim 1. Moores fails to disclose, at least, a housing having an air inlet aperture open to atmospheric air and a cowling, an agitator positioned within the cowling...a rotational driveshaft

within the housing and through which atmospheric air is drawn by action of the agitator. In addition, the teaching or suggestion of Beers, Rodoz, or Schub fail to cure the deficiency of Moores in showing all of the claimed limitations. As such, any proper rejection under 35 U.S.C. §103 has been obviated.

In summary, the Applicants have addressed each of the rejections within the present Office Action. It is believed the application now stands in condition for allowance and prompt favorable action thereon is earnestly solicited.

Respectfully Submitted,

Hang ZHAO

By, 

Guy D. Yale

Registration No. 29,125

Alix, Yale & Ristas, LLP

Attorney for Applicant

Date: February 10, 2005
750 Main Street
Hartford, CT 06103-2721
(860) 527-9211

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